QUARTERLY REPORT

OF THE

ATTORNEY GENERAL

OF

ALABAMA

For the Period

October 1, 1946

Through December 31, 1946

Volume 45

TO ALL STATE AND COUNTY OFFICERS OF ALABAMA:

In accordance with Code 1940, Title 55, Section 228, I am submitting to you the Quarterly Report of the Opinions of the Attorney General of Alabama. This Report covers all opinions rendered by the Attorney General from October 1, 1946, through December 31, 1946.

The Section of the Code referred to above requires that seven copies of this Quarterly Report be sent to each of the Probate Judges in the State, and the Probate Judge shall in turn deliver one volume each to the Clerk of the Circuit Court, the Sheriff, the Tax Collector, the Tax Assessor, the County Superintendent of Education, and Deputy or County Solicitor. Said Code Section also requires a copy of said Report be sent each Circuit Solicitor and the chief executive officer of each incorporated municipality in the State.

If you have any suggestions to make regarding the improvement of the service, we should be glad to receive it.

The office of the Attorney General is anxious to render prompt and efficient service to the State and county officials.

Very respectfully,

WILLIAM N. McQUEEN,

Attorney General.

QUARTERLY REPORT
OF THE
ATTORNEY GENERAL
For the Period October 1, 1946
Through December 31, 1946

Published by
WALKER PRINTING COMPANY
Printers and Stationers
Montgomery, Ala.

OPINIONS

State ex rel Austin v. City of Mobile
238 So. 2d 177, 248 Ala. 467

October 11, 1946.

Hon. Robin C. Herndon,

Mayor, City of Mobile,

Mobile, Alabama.

1. The City of Mobile has authority to grant financial aid to the State of Alabama, Department of State Docks and Terminals, in furtherance of the State Docks Expansion Program in said municipality.

2. The City of Mobile's contribution of funds to the State or its agency for the public purpose of State enlargement of docks within the municipality and improvement of drainage, storm protection and traffic systems within the municipality deemed authorized (a) as necessarily or fairly implied from express powers given said municipality under Code of Alabama 1940, Title 37, Sections 470 and 513, and (b) as an inherent right of said municipality in the furtherance of corporate purpose where the citizens of Mobile will receive substantial public benefits as a result thereof.

Opinion by Assistant Attorney General Gallion.

Dear Sir:

Your request for an official opinion, bearing date of October 9, 1946, is as follows:

"You have been supplied with a copy of a Resolution adopted by the Board of Commissioners of the City of Mobile at its meeting on October 1st, 1946, authorizing a grant of the sum of $350,000.00 in financial aid to the State of Alabama, Department of Docks and Terminals, in furtherance of the improvement of the harbor of Mobile and the expansion of the Alabama State Docks System.

"Under the statutes which permit the officials of municipalities within the State to call upon you for your official opinion in such matters, the members of the Board of Commissioners of the City of Mobile request your official opinion as to whether or not the City of Mobile may lawfully grant the financial aid to the State of Alabama, Department of State Docks and Terminals, in accordance with the said Resolution, and to carry out the purpose therein expressed."

In answer to your question, it is deemed necessary to first quote the resolution adopted by the Board of Commissioners of the City of Mobile in the matter. This resolution is as follows:

"RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE CITY OF MOBILE GRANTING FINANCIAL AID TO STATE OF ALABAMA, DEPARTMENT OF STATE DOCKS AND TERMINALS, IN FURTHERANCE OF THE IMPROVEMENT OF THE HARBOR OF MOBILE AND THE EXPANSION OF THE ALABAMA STATE DOCKS SYSTEM.

"WHEREAS, State of Alabama, acting by and through the Department of State Docks and Terminals, has determined upon a program to enlarge and expand the Alabama State Docks system situated in the City of Mobile, Alabama; and

"WHEREAS, said plans and program of enlargement and expansion include the construction of a system of wharves and docks on the west shore of the Mobile River between the present State Docks area and the north side of Dauphin Street, all at an estimated cost in excess of Four Million Dollars; and

"WHEREAS, said program of enlargement and expansion of said Alabama State Docks system will be a very substantial benefit to the City of Mobile and to its industrial enterprises, its merchants and to its citizens generally; and

"WHEREAS, among other things the said program of expansion will greatly increase the trade and commerce carried on in and through the Port of Mobile and will provide a substantial improvement to the Port facilities and harbor of the Port of Mobile; and

"WHEREAS, it is within the powers and functions and to the interest of the City of Mobile to develop or aid in the development of its Port and to improve and extend seawalls, dikes, levees and embankments within the limits of the City for protection against streams, rivers, waters, floods, tides and storms and in the improvement of the drainage system and the system of sanitary and storm sewers within the City and in the improvement of streets, the construction of viaducts and the elimination of traffic hazards, grade crossings; and

"WHEREAS, the said expansion program of the system of the Alabama State Docks will include many of the improvements just above enumerated and within a large section or area of the City of Mobile; and

"WHEREAS, in order to induce the State of Alabama to engage in said expansion program City of Mobile offered to the State of Alabama to grant to it the financial aid to said expansion program hereinafter set out and otherwise to cooperate with the State of Alabama in the furtherance of said program.

"NOW, THEREFORE, in consideration of the premises and of the great public benefit which the City of Mobile and its citizens will derive from the said expansion program and for other good and valuable consideration, it is hereby resolved by the Board of Commissioners of the City of Mobile as follows: That the City of Mobile grant and pay over to the State of Alabama, Department of State Docks and Terminals, the sum of THREE HUNDRED FIFTY THOUSAND DOLLARS in payment and satisfaction of the commitment of the City of Mobile made to the State of Alabama in inducement of the development of the Port of Mobile through the said expansion program of Alabama State Docks system; be it further resolved that the Mayor of the City is authorized and directed to make the above payment out of monies in the General Fund of the City not otherwise appropriated upon first obtaining proper certificates from the Director of the Department of State Docks and Terminals that said program of expansion has begun and has progressed to the point that said Department is acquiring the necessary land therefor, and upon obtaining appropriate assurances that said funds will be used to apply toward the cost of the additional land or facilities embraced in said expansion program and for no other purpose or purposes."

It is my opinion that your question should be answered in the affirmative.

Municipal corporations are strictly of political institution with all of their purposes and objects public. Every municipal corporation derives all of its power from the State and it can do only what the State Constitution and legislature entrusts to it. It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise only the following powers and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared object and purposes of the corporation not simply convenient but indispensable. 1 **Dillon on Municipal Corporations,** Section 89; 42 **Am. Rep.** 118; **Gambill v. Erdrick Bros.,** 143 Ala. 506, 39 So. 297; **Cleveland School Furniture Co. v. Greenville,** 146 Ala. 559, 41 So. 862.

By Title 37, Section 470, Code of Alabama 1940, under powers and duties of municipal corporations, the following authority is granted municipalities by the legislature of this State: "The council or other governing body of any town or city * * may construct and maintain wharves and construct buildings and other improvements on wharves * * *."

More specifically by Title 37, Section 513, Code of Alabama 1940, the legislature has delegated the following powers to municipalities in the field of public improvements: "All cities and towns in this state may design or cause to be designed, contract for and execute, or cause to be executed the * * constructing, acquiring, improving and extending of sea-walls, dikes, levees and embankments within the limits of the mu-

nicipality for protection against streams, rivers, waters, floods, tides, seas and waves in such manner as * such city or town may prescribe * * improving any street, avenue, alley, highway or other public place * * the construction or reconstruction of storm water sewers, main trunk storm sewers and storm water systems * * ."

The City of Mobile, in its grant to the State, by the very wording of the resolution here referred to, contemplates the development and improvement of these same enumerated facilities.

If the City has express statutory authority to expend money for the accomplishment of the above, it follows, in my opinion, that the City may grant to the State a sum of money when it is in furtherance of such accomplishment. Certainly it appears to be a power "necessarily or fairly implied in or incident to the powers expressly granted." (Citing from authorities quoted supra.)

The contemplated State program will obviously greatly increase the trade and commerce of the City of Mobile and prove of substantial benefit to its industrial enterprises, merchants, and citizens generally.

It would appear that an inherent right to contribute to such a program would vest in the City in view of the public purposes such a program would accomplish for the benefit and general welfare of its citizens. Thus it would also appear that such an objective could be deemed in that category of powers considered indispensable to the "declared objects and purposes of the corporation."

Chief Justice Anderson, in the Alabama Supreme Court case of **Fitts v. Commission of City of Birmingham, et al**, 224 Ala. 600, held in effect that the courts of Alabama follow the broad view as to the inherent power of municipalities to expend money in the interest and welfare of its citizens.

In the case of **Carey v. City of Haleyville**, 230 Ala. 401, 161 So. 496, where the City of Haleyville agreed to donate funds to the county in contemplation of a public school building being built in the city—the Supreme Court of Alabama held that such a donation was valid regardless of whether or not pupils from outlying districts attended the school and regardless of whether or not the county retained title and control of the building. The court in this instance held in part as follows:

> "True the municipality may not have title to the school building and it may be under the control of the county board * * and the affairs of the school being under like control. But cases of this character would deny the municipal corporation the power to donate any funds to the betterment of the schools located therein * *. Yet **the inhabitants of Haleyville received the benefit and enjoy the privileges of these schools in their midst; and the mere fact that an-**

other and independent agency of the state controls their affairs is no reason for a denial of the right of the citizens through their municipal authority lending aid in support of such institutions." (Emphasis supplied.)

Likewise, in the case of **First National Bank of Birmingham v. Walker County Board of Education,** 243 Ala. 576, 11 So. 2d. 297, the Supreme Court held: "A 'moral obligation' sufficient to sustain an appropriation of public funds in payment thereof exists under circumstances where in fairness the state might be asked to respond and where something more than a mere gratuity is involved * * a town was authorized to donate, without exacting an obligation to return them, funds to the county board of education for purchase of a lot and construction of a building within the town for use as a part of the county public school system where the town schools were under jurisdiction of the county board."

There apparently are no cases directly on point in this State on the specific question here presented. However, analogous cases and the evidenced trend of our Supreme Court as herein noted would indicate that our Supreme Court would hold that the City of Mobile has the authority to contribute the funds under consideration.

Additional fortification appears to be found in the following decisions of other jurisdictions:

The case of **Vrooman v. St. Louis,** 337 Mo. 933, 88 S. W. 2d. 189, where it was said that the city could donate its funds to the United States to acquire and construct a national park or plaza within the city.

The case of **Sacramento v. Adams,** 171 Calif. 458, 153 Pac. 908, where the city acquired land for the purpose of a public park and donated same to the state in contemplation of the state constructing public buildings thereon.

The case of **People, ex rel. Illinois Armory Board v. Kelley, Mayor, et al,** 369 Ill. 280, 16 N. E. 2d. 693, in which it was held that the city's "donating funds or property" for a state armory within the city was in furtherance of the corporate function and thus a corporate purpose making such a donation valid.

It in nowise appears that Section 94 of our Constitution of 1901 would be applicable. This Section is as follows: "The legislature shall not have the power to authorize any county, city, town, or other subdivision of this state to lend its credit, or to grant public money or thing of value in aid of, or to, any individual, association or corporation whatsoever, or to become a stockholder in any such corporation, association or company, by issuing bonds or otherwise."

Inasmuch as public purpose is here clearly involved, any possible

inhibitions of this Section would not, in my opinion, attach. See **Alabama State Bridge Corporation, et al v. Smith,** 217 Ala. 311, 116 So. 695, and cases cited thereunder.

It is therefore my opinion, in conclusion, that the City of Mobile may lawfully grant financial aid to the State of Alabama, Department of State Docks and Terminals in accordance with the said resolution and to carry out the purposes therein expressed.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

October 18, 1946.

Hon. J. S. Benson,
Judge of Probate,
Jackson County,
Scottsboro, Alabama.

Jurisdiction of Justices of the Peace.

1. The Local Act of the Legislature (Local Acts 1945, page 69) vesting authority in Justices of the Peace in Precinct 21 of Jackson County to exercise jurisdiction throughout the entire County does not violate Section 104(21) of the Constitution of Alabama.

2. The word "jurisdiction" used in the Constitution and the Local Act means the authority of the justices to hear and determine causes of action legally submitted to them by the parties litigant.

3. The Local Act simply extends the same authority to the entire county.

4. The Constitution makes no attempt to prescribe the venue. It leaves that matter to the Legislature.

Opinion by Assistant Attorney General Callahan.

Dear Sir:

Your request for an official opinion, bearing date of October 9, 1946, is as follows:

"I desire an opinion from your office as to the Constitutionality of Local Act 109 as set out on page 69 of the Local Acts of 1945 in

view of the provisions of Section 104 (21) and Section 105 of the Constitution.

"I call your attention to the fact that at the time of the passage of the Local Act under consideration in Southern Railway Co. vs. Fitzpatrick—195 Ala. 328, the Constitution of 1901 was not in effect and the Constitution then in effect had no similar restrictions as to local legislation. Of course, the latter adoption of the Constitution of 1901 had no retroactive effect upon the local law then already in force and effect. 12 Corpus Juris, page 728, Section 101. In my opinion, the dissenting opinion in that case would have been the majority opinion had the Constitution of 1901 been in effect at the time the Local Act under consideration in that case was passed."

Your question seeks an opinion on the constitutionality of a Local Act for Jackson County, approved June 16, 1945 (Local Acts 1945, page 69).

The Act provides that all justices of the peace and notaries public with powers of justices of the peace in precinct 21 of said county shall have and exercise jurisdiction throughout the county.

You refer in your letter to Sections 104(21) and 105 of the Constitution of Alabama 1901 as the provisions of that instrument which the Local Act is supposed to offend.

We will notice these sections in the order named. Section 104 catalogues thirty-one different items of legislation forbidden to be passed by special, private, or local enactments. In subsection 21 of this section, this provision forbids, first, increasing the jurisdiction of the justices of the peace, and second, increasing the fees of constables. The provision to increase the jurisdiction is the provision here involved.

The meaning of the word "jurisdiction" controls the question here under consideration. This word as here used must be construed according to its legal meaning. It is unanimously held by the courts that jurisdiction means the authority of the court to hear and determine disputes lawfully brought before it. This principle is so well established and so universally recognized that it seems citation of authority would be superfluous. However, if investigation is to be made, many authorities are to be found in 23 **Words and Phrases** (Per. Ed.), pages 358-380.

Some confusion occasionally arises by failure to distinguish jurisdiction from venue. Jurisdiction is, as we have noted, the power of the court to hear and determine the subject matter in dispute, while venue simply deals with the place where the dispute is to be heard.

44 **Words and Phrases** (Per Ed.), pages 122-124;

23 **Words and Phrases** (Per. Ed.), pages 401-402.

Section 104(21) simply prohibits the making of a law increasing the jurisdiction of the courts; that is to say, the Legislature shall not by special, private, or local enactment create new or additional subject matters to those existing at the time of the adoption of the Constitution. The Local Act here under review makes no attempt to add to or increase the jurisdiction of justices of the peace conferred upon them by the Constitution and laws in force, nor does it make any attempt to prescribe the venue. The question of venue is left to the Legislature to fix. The Local Act merely authorizes the justices of the peace to exercise what jurisdiction they have as fixed by law, not only in the precinct of their residence but in the entire county.

So. Railway Co. v. Coggins, 198 Ala. 642-647.

You refer to **So. Railway Co. v. Fitzpatrick,** 195 Ala. 328, where a local act in principle involves the same question as here under review was held to be valid. Your letter suggests that the local act there under consideration was passed before the effective date of the Constitution of 1901. The section of the Constitution leaves the Legislature unhampered to extend the power to hear and determine causes of action arising in the precinct to the entire county and as this does not increase the jurisdiction it is unimportant as to when the act in the Fitzpatrick case was passed. Moreover, the Supreme Court of Alabama in the case of Roberts v. Brights, 222 Ala. 677, 679, where the court was passing upon a local act (Local Acts 1919, page 57) which raised the same question as the Act here under consideration, the court endorsed and followed the case of **So. Railway Co. v. Fitzpatrick,** supra, and held the Act free from constitutional inhibitions.

The Local Act here involved makes no change of the courses of action over which the justices of the peace had jurisdiction, but simply extends the jurisdiction they already had to the whole county.

Section 389, Title 13 of the Code of Alabama 1940, provides that justices of the peace shall have original jurisdiction within their respective counties to be exercised as provided by law.

We are of the opinion that Section 105 of the Constitution has no application to the Local Act here under review. It follows that the Local Act of Jackson County does not run counter to the constitutional sections cited by you.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

October 22, 1946.

Hon. Roy Johnson,
Tax Assessor,
Jefferson County,
Birmingham 3, Alabama.

Statutes—Number of Votes to Enact—

1. Construing § § 52 and 39 of the Constitution together, the words "each house" as used in Section 39, requiring a vote of two-thirds of the members for the enactment of the legislature therein named, means a majority of the members present and taking part in the enactment of the law. This rule applies to both general and local legislation.

Opinion by Assistant Attorney General Callahan.

Dear Sir:

Your request for an official opinion, bearing date of October 15, 1946, is as follows:

"In the 1943 Legislature, House Bill 773 by Smyer and Head was passed. This act is on page 173, Local Acts of Alabama 1943. The act fixed the Jefferson and Shelby County boundary line. The vote was unanimous in both the Senate and the House of all those present. Sixty-nine members of the House voted for the bill, and twenty-three members of the Senate voted for the bill.

"Section 39 of the Constitution of Alabama reads as follows: 'The legislature may, by a vote of two-thirds of each House thereof, arrange and designate boundaries for the several counties of this state, which boundaries shall not be altered, except by a like vote. . . .'

"The question arises now whether or not, under the Constitution, the above act was passed by a two-thirds majority, and whether or not, it being a local act, it was necessary to have a two-thirds vote of each House on the bill even though those present all voted for it, and there was no dissenting vote. This question is vitally important to several of our taxpayers whose property was affected in altering the boundary lines of the two counties.

"Inasmuch as the state may go back five years and the taxpayer can only get a refund for two years, it is important that we have your opinion at the earliest possible moment for the tax year on which payment expires the 31st of December."

Your letter shows that twenty-three members of the Senate and sixty-nine members of the House voted for the passage of a Local Act

of 1943 (Local Acts 1943, page 173), fixing the boundary line between Jefferson and Shelby Counties.

Your sole question is, "Does the Act offend Section 39 of the Constitution of 1901 of Alabama?" This Section requires such legislation to be passed by a vote of two-thirds of each house. We have been unable to find where Section 39 has been directly construed by our courts, but several cases have passed upon the same language found in Section 76 of the Constitution.

Section 52 of the Constitution provides that a majority of each house shall constitute a quorum to do business. Construing this section together with Section 39 of the Constitution, the word "house" means a majority of the members of such house present and taking part in its action.

Farmers Union Warehouse Co. v. McEntosh, 1 Ala. App. 407;

State ex rel Meyer v. Green, Probate Judge, 154 Ala. 249;

In Re Opinion of the Justices, 228 Ala. 140.

In view of these authorities, the Local Act in question does not violate Section 39 of the Constitution of Alabama 1901. This conclusion applies to acts of the Legislature, whether general or local.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

October 28, 1946.

Hon. O. C. Maner, Clerk,
Court of Common Pleas,
Montgomery County,
Montgomery, Alabama.

Fines and Forfeitures—Highway Patrol—Title 36, Section 24; Title 36, Section 53; Title 36, Section 53(1); Title 15, Section 392, Code of Alabama 1940.

Fines collected from persons approaching school buses without stopping paid into Highway Patrol Fund.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of October 23 ,1946, is as follows:

"Subject: Disposition of fines for conviction of offenses under

Section 24 of Title 36, Code of 1940.

"In the bound volume of the Reports of the Attorney General 1936-38, page 190, it is held that such fines must be paid into the County Treasury. This seems to conflict with Section 53 of Title 36 of the Code.

"Please advise me where the fine should go and to whom it should be paid."

You are advised that the fine for violating Title 36, Section 24, Code of Alabama 1940, should be paid into the Highway Patrol Fund under the provisions of Title 36, Section 53, Code of Alabama 1940.

As stated in your inquiry, an opinion of the Attorney General, dated April 23, 1937, Biennial Report of the Attorney General, 1936-1938, p. 190, states that such fine should be paid into the county fine and forfeiture fund. At the date this opinion was written it was correct, since the Act of 1935, p. 240, did not make a special provision for the distribution of the fine. In this situation the fine should go to the fine and forfeiture fund of the county. Title 15, Section 392, **Code of Alabama** 1940.

Under the adoption of the 1940 Code, however, the Act of 1935, p. 240, was included in Chapter 1, Title 36, known as the Rules of the Board. Section 53 of this title and chapter provides that all fines and forfeitures collected upon conviction of any person charged with any of the provisions of the chapter constituting a misdemeanor shall be forwarded to the Treasurer and paid into the Highway Patrol Fund.

Since the adoption of the 1940 Code, therefore, fines for violation of Section 24, Title 36, Code of Alabama 1940, should be paid into the Highway Patrol Fund.

We call your attention, however, to one exception, when the arrest is made by the sheriff, his deputy, or any other county or municipal law enforcement officer, the fine should be paid into the general fund of the county or to the fine and forfeiture fund of the county. See General Acts 1945, p. 494, approved July 9, 1945; Title 36, Section 53(1), 1945 Cumulative Pocket Part, Code.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

October 28, 1946.

Hon. Roy Johnson,
Tax Assessor,
Jefferson County,
Birmingham 3, Alabama.

Taxation—Statutory Exemptions—

1. Under Title 51, Section 3 of the Code of Alabama 1940 municipal corporations have authority to exempt from city taxation plants established since September 13, 1939, for the manufacture of garments or wearing apparel.

2. To receive the benefit of such exemption the exemption, under Section 4 of this Title 51, must make application in writing to the municipality. This application must give the location of the proposed plant, the date of its incorporation, if it is a domestic corporation, and if a foreign corporation, it must be shown in the application the date on which such corporation was granted permission to do business in Alabama, together with other named requirements of said Section 4.

3. There can be no exemption of the land on which such plant is located.

4. Municipalities may grant a franchise to electric power plants and include therein exemption from municipal taxes. Such a franchise is a contract and protected by state and federal constitutions.

Opinion by Assistant Attorney General Callahan.

Dear Sir:

Your request for an official opinion, bearing date of October 17, 1946, is as follows:

"I am just in receipt of the following letter from Ollie F. Clower, Tax Collector of Covington County:

October 16, 1946.

" 'Hon. Roy Johnson,
Secty.-Treas.
The T. A. & T. C. of Ala.,
Room 106, Court House,
Birmingham, Alabama.

" 'Dear Roy:

" 'The Tax Assessor, Mrs. C. F. Hart, and I have a set of Auditors, and I am writing you for a bit of information, this is just on City tax

only, we have two assessments in the City of Florala, which are Manufacturers of Underwear and the City Council each year at paying time votes to give these institutions the City tax each year and sends me written permission not to collect the City tax, so I paste this letter to my receipt and mark same City tax exempt by City Council of Florala, Alabama. This has been done each year since I have been in office and all the auditors have accepted it as O. K. but the ones we have now say they are going to charge it back to us as the City has no authority to exempt the City tax.

" 'Also, I have one in the City of Red Level where the City Council exempt the Power Company from City tax in the Franchise with the Company and the City, for the Power Company not to pay City tax and we have it in writing from the City Council not to collect the Red Level City tax and he says the City has no authority to exempt the City tax in the Franchise. This has also been done each year since I have been in office and before, and all other Auditors have O. K.'d it, but these are charging it back to us, and I understand the Association wishes for us to take our problems up with the officials of the Association before asking the Attorney General about it. Please let me know the proper way of handling same.

" 'Yours very sincerely,

" 'OLLIE F. CLOWER.'

"Mr. Clower has asked that I, as Secretary of the Association of Assessors and Collectors, get a ruling from you which will cover, of course, all tax assessors and tax collectors.

"Under Title 51, Section 3, page 629, Code of Alabama, 1940, the city governing body has the right to remit the taxes for all county and municipal purposes except for county schools and school districts.

"Under Section 4, page 631, Code of Alabama, the method of obtaining an exemption is outlined, but since Section 3 uses the word remit, which from Mr. Clower's letter seems to be what was done in the City of Florala and the City of Red Level, then I don't see how they can charge Mrs. Hart and Mr. Clower back with the taxes.

"Evidently, the city waited until the taxes became due before passing an ordinance, and instructed Mr. Clower in writing not to collect the taxes. This may be where the error lies, however, and I ask that you please give me your official opinion as to whether or not Mr. Clower is protected by the city's written instructions, and as to whether or not he can be charged back by the State Examiner of Accounts with the amount he failed to collect from the firms outlined in his letter."

Your letter presents two propositions. First, the authority of the City of Florala to exempt from taxation property of manufacturers of rayon and silk fabrics, and of garments or wearing apparel, located in the city and the manner of conferring the right. Second, the authority of the Town of Red Level to exempt the Power Company from city or town taxation as a consideration, or part of a consideration, for the issuance of a franchise to it.

We will consider these questions in the order named.

Title 51, Section 3, authorizes the City of Florala to remit (exempt) the taxes assessed for municipal purposes, factories or plants, and extensions or additions to such plants as are already built, or additions thereto afterwards made, for a named period. This section further provides that these exemptions shall not apply to the land on which the plant is located or proposed to be located, and it further provides when construed with Section 9 of Title 51 that the exemptions do not extend or apply to plants existing prior to September 13, 1939. These exemption provisions are not self-executed, but to be entitled thereto the exemptor must comply with Section 4 of the same title. This section requires that one seeking the benefit of the exemption from city taxes must make application in writing to the constituted authorities of the city or town, giving the location, etc., of the plant and pray for an order to be made by the city or town granting the exemption and if the application is granted the order must be entered on the minutes of the city or town and designate the time when such exemption shall expire. This section, continuing, says:

> "But all such property must be returned to the State for taxation unless exempted by a law therefrom."

It is obvious that the requirements of this section, or at least those that are required of the exemptor, must be fully and strictly complied with in order to have the benefit of the exemption. It is manifest that the city or town has no authority to furnish the tax collector authority to give directions to him to remit and not collect the taxes on the manufactured products. Such directions cannot take the place of the mandatory provisions of Section 4 of this Title. It is a settled law of this State that a party claiming the benefit of an exemption provided by law must first comply with all its requirements prescribed by the enactment.

We will now consider the franchise to the Power Company by the Town of Red Level. You state that the town by its franchise exempt the company from the payment of city taxes. Title 37, Section 360 of the Code of 1940 authorizes cities and towns to contract for the furnishing of gas or electricity to municipalities. It is thus seen that this section settles the question as to the authority to make such a contract. We are not furnished with a copy of this franchise, but will assume that it is so drawn as to constitute a valid contract under the law. The point raised against it is that the town has no authority to exempt the Power Company

from the payment of taxes. It appears that this exemption was incorporated into and formed a part of the contract as a consideration therefor. We know of no law forbidding this to be done. The decisions of our Supreme Court and those of the Supreme Court of the United States hold that such a contract is protected by the Constitution of this State and also by the Constitution of the United States.

This principle has been so long established that discussion or citation of authorities appear unnecessary; however, for your convenience we cite **Phenix City v. Alabama Power Company,** 239 Ala. 547. The Town of Red Level in view of the franchise granted to the Company has no authority to levy and collect a tax against said company.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

December 3, 1946.

Hon. Raymond R. Paty, President,
University of Alabama,
Tuscaloosa County,
University, Alabama.

States—Labor Unions.

1. University of Alabama, or any branch operation thereunder, has no authority to enter into contract with a labor union, recognizing such union as the bargaining agent for University employees.

2. University of Alabama may require that its employees not belong to a labor union, either as a condition precedent to employment or as a condition subsequent to the retention of employment.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion, bearing date of November 25, 1946, is as follows:

"The Dean of the Medical College of Alabama (a branch of the University of Alabama, operated in Birmingham) has been approached by a representative of the CIO labor union, who informed him that certain employees—mostly colored employees—employed in the operation of the Medical College and its teaching hospitals (Jefferson

and Hillman Hospitals) have been unionized, and has requested the Dean of the Medical College to meet with him as the representative of said employees for the purpose of entering into a collective bargaining contract for said employees.

"The University has always taken the position that it was an integral part of the state, and that the state does not recognize the right of its employees to demand bargaining rights through a union.

"In view of the situation above outlined, you are respectfully requested to furnish the University of Alabama your official opinion in answer to the two following questions:—

"(1) Has the University of Alabama, or any branch operation thereunder, authority to legally enter into a contract with a labor union, recognizing such union as the bargaining agent for University employees?

"(2) Can the University of Alabama legally require its employees not to belong to a labor union, either as a condition precedent to employment or as a condition subsequent to the retention of employment?"

I am of the opinion that your first inquiry should be answered in the negative. Such a contract would be contrary to the public policy of the State as evidenced by House Joint Resolution No. 142, approved July 10, 1940 (General Acts 1939, p. 1004) which is as follows:

" 'WHEREAS, it has come to the attention of the Alabama Legislature through the press of this State that efforts are being made to organize the employees of this State into a union, same to be affiliated with either the A. F. L. or the C. I. O., and

" 'WHEREAS, the right to organize carries with it the right to strike which right, if exercised by the organization of State employees mentioned would result in chaos and take from the servants of this State elected by the people the right and power to manage the State's affairs and transfer same to the officials of the A. F. L. and the C. I. O., and

" 'WHEREAS, even the thought of such possibility is repugnant to every sense of democracy, therefore,

" 'BE IT RESOLVED by this Legislature, the Senate concurring, that the effect to organize State employees supported by the taxpayers' money—Jew, Catholic and Protestant alike—is viewed with grave concern and disfavor by this Legislature.

" 'BE IT FURTHER RESOLVED that copies of this resolution be given to the Governor of this State and to the press of this State in order that its citizenship may know that the spirit of Democracy

still lives in this the first State on the alphabetical list of states of the Union—that spirit now threatened with extinction both in America and throughout the world.' "

The foregoing resolution is an expression of the elected representatives of the people. A contract contrary to this expressed public policy would be unauthorized.—**Quarterly Report of Attorney General**, Vol. XXIII, p. 55.

The resolution refers to "employees of this State." This phrase, in my opinion, includes employees of the University of Alabama, or any branch operation thereunder. The University of Alabama is an agency of the State.—**Cox. v. University of Alabama**, 161 Ala. 639, 49 So. 814; see also **Harman v. Alabama College**, 235 Ala. 148, 177 So. 747. Its employees, or the employees of any branch operation thereunder, are employees of the State within the meaning of the resolution in question. Cf. **Quarterly Report of Attorney General**, Vol. XXIII, p. 55, supra, and **Opinion of Attorney General to President of City Commission of Gadsden**, dated September 19 ,1946

In my opinion both portions of your second inquiry should be answered in the affirmative. A contract such as the one under consideration would be unauthorized. In my judgment the University may legally require that its employees do not belong to a labor union, either as a condition precedent to employment or as a condition subsequent to the retention of employment.—**City of Jackson v. McLeod** (Miss.), 24 So. 2d 319, cert. den. 66 Sup. Ct. Rep. 1368; **Opinion of Attorney General to President of City Commission of Gadsden** dated September 19, 1946, supra.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

December 4, 1946.

Mr. W. W. Garrett,
Chairman, Agricultural Center Board,
Uriah, Alabama.

Agricultural Center Board—Agriculture — Livestock — Livestock Center—Regional Agricultural Centers—Exhibits—States—Constitution of 1901—General Acts of 1945, p. 447, General Acts of 1945, p. 473.

A general discussion of the powers and duties of the Agricultural Center Board in connection with regional exhibition facilities.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion bearing date of November 15, 1946, is as follows:

"It is requested that an official opinion be rendered on the following questions:

"1. May the Agricultural Center Board, as established by Act No. 282, approved July 7, 1945, contract with a municipality or county in the State of Alabama whereby the municipality or county would be bound to do its part in the construction of a regional coliseum and the State of Alabama, through its Agricultural Center Board, would be bound to do its part in the construction of the coliseum; and, where the Agricultural Center Board could retain the power to approve or disapprove and act in a supervisory capacity concerning the site, construction and related matters, during the building of the facility?

"2. In such contract or in separate agreement, may the Agricultural Center Board, subject to the approval of the Governor, retain a measure of control over the regional coliseums, including the right to act in an advisory capacity and including the right to determine whether or not the regional coliseums are used for the purposes for which they were constructed?

"3. After this contract has been entered into, can the Center Board order payment to the local agency of the money allotted to that community to be held in trust for the purpose stipulated in the contract?"

You are advised that your question numbered (1) is answered in the negative; your question numbered (2), in the negative; and your question numbered (3), in the negative.

Since this is the first inquiry concerning the recently established Agricultural Center Board, and since there have been several other questions concerning the operation of this Board, we shall, in answering your inquiries, include a general discussion of the powers and duties of the Agricultural Center Board.

The Agricultural Center Board was created by an Act of the Legislature approved July 7, 1945, General Acts of 1945, p. 447. It was created primarily to consult and advise with the Alabama Building Commission in the construction of the State Agricultural Center and for the management and control of that Center after it shall have been constructed.

Approved on the same day as the Act creating the Agricultural Center Board was another Act, No. 286, General Acts of 1945, p. 473, which provides as follows:

"Section 1. There is hereby appropriated to the Agricultural Center Board from the Agricultural Fund a sum not to exceed $200,000.00, to be released only upon consent of the Commissioner of Agriculture and Industries and the State Board of Agriculture and Industries.

"Section 2. The appropriation herein made shall be used by the Agricultural Center Board, upon approval by the Governor, exclusively for the purpose of aiding in the constructing and equipping by counties and municipalities of facilities suitable for housing fat livestock shows, agricultural and industrial displays, and other exhibits consistent with the public good. Not more than $50,000.00 of the appropriations may be expended by the Agricultural Center Board within the boundaries of any one county. The proportion of the total cost of such facilities borne by the Agricultural Center Board shall not exceed two-thirds in any instance. For purposes of this act, the cost of facilities shall not be deemed to include the cost of acquiring land, but shall include only the erection and equipping of buildings and other structures. Counties and municipalities may be allowed by the Agricultural Center Board, however, to include existing buildings and other structures and the equipment therein, if used or to be used for the purpose herein stated, in the cost of the facilities contemplated by this act; the credit given for such existing buildings, structures, and equipment, however, shall not in any instance exceed one-third of the cost of the facilities contemplated by this act.

"Section 3. This act shall take effect October 1, 1945."

As noted in Section 1 of the Act, $200,000.00 is appropriated to the Center Board. This $200,000.00 is available to the Center Board when the Commissioner of Agriculture and Industries and the State Board of Agriculture and Industries both consent to its release.

After the appropriation is released to the Center Board, Section 2 of the Act provides that the Board, upon the approval of the Governor, may use the funds "exclusively for the purpose of aiding in the constructing and equipping by counties and municipalities of facilities suitable for housing fat livestock shows, agricultural and industrial displays, and other exhibits consistent with the public good."

The Act further provides that only a certain amount of State funds shall be expended in any one county, and that the State shall not pay more than two-thirds of the total cost of any structure, costs to be determined exclusive of land. Section 2 of the Act, therefore, provides State funds which may be distributed and allotted by the Center Board and the Governor to municipalities and counties in order to aid the municipality or county to construct and equip the structures and facilities referred to in the Act. The State funds or allotments, therefore, are available to the cities and counties selected by the Board so that these funds may aid those cities and counties in constructing their livestock coliseums and their buildings to house agricultural and industrial displays and other exhibits consistent with the public good.

We believe that Section 2 of the Act evidences a legislative intent to provide State aid to counties and municipalities in constructing their

own exhibition facilities. It has been held that the legislature is not prohibited from establishing a State Market through a State Market Board, further that the legislature is not prohibited from establishing a Public Hunting and Forestry Association. The constitutionality of both of these projects have been sustained. **Opinion of Justices,** 23 So. 2d 505; **In Re Opinion of the Justices,** 22 So. 2d. 521. Under these decisions it is our opinion that the Supreme Court would also hold that the State may aid local communities in establishing "facilities suitable for housing fat livestock shows, agricultural and industrial displays, and other exhibits consistent with the public good."

The powers and duties of the Agricultural Center Board, including its powers to contract, so far as regional facilities are concerned, must be found within Act No. 286, General Acts of 1945, p. 473. See **Wadsworth, et al v. State,** 225 Ala. 118, 142 So. 529, 59 **C. J.** 171. Also **State v. Cobb,** 64 Ala. 127; **Van Dyke v. State,** 24 Ala. 81; **Walker v. Chapman, Governor,** 22 Ala. 116, 131; **Ex Parte State,** 52 Ala. 231; **Miller v. Swann & Billup,** 89 Ala. 631, 7 So. 771.

What then are those duties and powers?

The entire appropriation is $200,000.00. $50,000.00 is the largest amount that may be expended in any one county. In my opinion, it is a necessary implication that the Agricultural Center Board, with the approval of the Governor, may select and choose those counties or municipalities in which the appropriation and each part thereof may be expended. In selecting and choosing the counties or municipalities in which the described facilities are to be constructed, the Board and the Governor may use any reasonable method that they desire.

In choosing the location for the regional facilities, it is my opinion that the Board or the Governor may require the municipality or the county to show that the municipality or the county has acquired good and merchantable title to suitable land. The best method for determining this question is to require that the municipality or county furnish a complete abstract of title for examination by the Center Board.

It is also a duty of the Agricultural Center Board, with the approval of the Governor, to require the county or the municipality to acquire or erect facilities "suitable for housing fat livestock shows, agricultural and industrial displays, and other exhibits consistent with the public good," for the reason that the funds are available to the counties and municipalities only for the purposes of aiding in the construction of such facilities and the equipping thereof. The Board should, therefore, require the municipality or county to satisfy the Board and the Governor that the facilities will be suitable. We suggest that the Board require architects' drawings and specifications showing the complete facility as it is proposed to be constructed, including estimated costs. The Board should also

require a description and itemization of the equipment proposed to be purchased for such facility, including estimated costs.

It is also a duty and within the power of the Board to require that the constructing and equipping of the facilities by the municipality or county must be in accordance with the specifications furnished. In our opinion, this power of the Board will extend throughout the construction period and until the facility is complete.

The Agricultural Center Board or the Governor should also require that the municipality or county furnish evidence that they have appropriated necessary funds to supplement State appropriations for the building of the facility. A resolution or ordinance of the municipal governing body or county governing body would be the best evidence of this fact.

It is further my opinion that the Board may and probably should require the county or municipality at the time the State allotment is made to hold a contractor's bid for the construction of the facility.

After all of the above procedure has been followed, it is my opinion that the Board, with the approval of the Governor, may then allot to the municipality or county the amount of State funds to which it is entitled. This allotment may be made subject to the conditions herein discussed.

We now come to your question (1).

I have outlined above what I think are the necessary steps in constructing the regional facilities, and it is my opinion that after the Board has located the regional facility and satisfied itself that the county or municipality owns title to the land, that the plans and specifications are suitable, and that the municipality or county holds a bid or offer by a contractor to perform the work, and that the necessary municipality or county funds have been appropriated, the Center Board, with the approval of the Governor, may enter into an agreement with the municipality or county and allot the amount available to the local unit upon the **condition that the facility is to be constructed and equipped in accordance with the plans and specifications submitted.** These should be attached to the agreement and be a part thereof. The agreement can be so drawn that if the construction is not in accordance with the plans and specifications which have been submitted before, the Board may refuse to release the allotment.

You are advised that neither the Center Board, the Governor, nor both have the power to enter into a contract as described in your inquiry. The power of the State to contract is a legislative prerogative, and no officer can contract for it without legislative authority, not even the Governor. **Wadsworth, et al v. State,** 225 Ala. 118, 142 So. 529; 59 **C. J.** 171; **State v. Cobb,** 64 Ala. 127; **Van Dyke v. State,** 24 Ala. 81; **Walker v. Chapman, Governor,** 22 Ala. 116, 131; **Ex Parte State,** 52 Ala. 231; **Miller v.**

Swann & Billup, 89 Ala. 631, 7 So. 771. The Act does not authorize the Board or the Governor to enter into a contract in the sense that such contract would be binding on the State. A contract entered into without authority of law would therefore be void. In short, it is my opinion that an unauthorized contract would be unenforcible, and the Board could not be assured that its terms would be carried out.

Although no contract is authorized, I see nothing in the Act to prevent the Board from entering into an agreement with the local unit wherein the Board agrees to advance funds as the work progresses according to the plans and specifications previously approved by the Board.

We shall be glad to confer with you further upon the matter of this agreement.

In answer to your question (2), you are advised that after the facilities are constructed by the municipality or county, the State Agricultural Center Board has no further duties. It is the duty of the Board to see that **suitable** facilities are constructed, but it is then the duty of the municipality or county to see that those facilities are used only for the purposes for which they were built.

Here we should point out that the Act contemplates supervision by the Center Board only during the time of the constructing and equipping of the local facility. There is no provision made in the Act either expressly or impliedly requiring the Center Board or the Governor to supervise the management of the project after it shall have been constructed and equipped. It is my opinion, therefore, that the duties of the Center Board and the Governor terminate when the project is complete. Management and control is then under the supervision of the local governmental unit owning the facility. This, however, does not mean that municipalities or counties may use the facilities without any limitations. The State has contributed to the building of the projects and the appropriations were for enumerated purposes, i. e., to aid the counties and municipalities in the construction of "facilities for housing fat livestock shows, agricultural and industrial displays, and other exhibits consistent with the public good." The uses to which the facilities are put, therefore, must be uses within the meaning of the above quoted phrase and not be in violation of the Constitution.

Section 2 of the Act, in appropriating State funds to aid the counties and municipalities in constructing and equipping "facilities for housing fat livestock shows, agricultural and industrial displays, and other exhibits consistent with the public good" is binding upon the counties and municipalities as well as upon the Agricultural Center Board. We believe that this Section requires that facilities be used only for those purposes outlined in Section 2 of the Act, and if not so used the municipality or county could be restrained by appropriate legal proceedings. The use of the building would then be a question for the courts and not the Center Board to determine.

It is my opinion that your question (3) must also be answered in the negative.

The payment or distribution of the money appropriated by the State to the Center Board is a duty of the Agricultural Center Board and not a trustee. The Act provides that the Center Board and the Governor must require suitable facilities be constructed. We have already indicated that the Board may retain power to require that the facilities be constructed in accordance with the plans and specifications submitted by the municipality. This power to determine whether the actual construction is in accordance with the plans and specifications previously approved by the Board is a duty that has been delegated to the Board by the legislature which should not and cannot be redelegated to a trustee. I do not believe that it would be in accordance with the terms of the Act for the Board to attempt to authorize a third party to decide whether or not suitable facilities have been constructed before paying the local unit its allotment. The Board and the Governor should perform this duty.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

December 6, 1946.

Hon. E. W. Gunn, Administrator,
Alabama Alcoholic Beverage Control Board,
Montgomery 2, Alabama.

Intoxicating Liquors—

Alabama Beverage Control Board may not promulgate rules and regulations prohibiting advertising of alcoholic beverages, as authorized under Section 12, Title 29, Code of Alabama 1940, in "dry counties."

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion, bearing date of December 2, 1946, is as follows:

"I quote herewith Section 12 of Title 29, Code of Alabama 1940:

" 'There shall be no electric signs, painted signs, or signs of any kind, displayed outside any place of business advertising alcoholic beverages as enumerated and defined in this chapter; and there shall be no advertising of alcoholic beverages as enumerated and defined in this chapter, except through newspapers, magazines, and radio

broadcasting stations, provided, however, that malt or brewed beverages as herein defined may be advertised by means of billboards.'

"Does the Alabama Alcoholic Beverage Control Board have the legal right to promulgate rules and regulations prohibiting the advertising of alcoholic beverages in 'dry' counties by means of billboards, magazines, and newspapers published in 'dry' counties and the advertising of alcoholic beverages by radio broadcasting stations located in the 'dry' counties?"

I am of the opinion that your inquiry should be answered in the negative.

Section 12, Title 29, Code of Alabama 1940, quoted in your letter, prohibits the advertising of alcoholic beverages except through certain authorized media. No penalty is provided in said section for a violation of same. However, such a violation is made a misdemeanor under Section 78, Title 12, Code of 1940.

The question then presents itself as to whether Section 12, supra, applies to and is effective in "dry" as well as "wet" counties.

If the answer to this query is in the affirmative, then the Alcoholic Beverage Control Board is without authority to promulgate such rules and regulations as the ones in question by virtue of its authority under Section 6, Title 29, Code of 1940. Such rules and regulations would be inconsistent with and contrary to the expressed terms of Section 12, supra, which authorizes the types of advertising sought to be prohibited. **Quarterly Report of Attorney General**, Volume 10, page 110.

Article 5 of Chapter 167 (Sections 4666-4670), Code of 1923, dealt with the prohibition against advertising of alcoholic beverages in general. Section 6 (9) of the Alabama Beverage Control Act (General Acts 1936-37, page 40) contained the proviso, "Article 5 of Chapter 167, Code of 1923, is hereby repealed." Assuming this repealer was applicable to only "wet" counties, nevertheless Article 5, supra, has been repealed as it was omitted from the Code of 1940. **Askins v. State ex rel. Johnson**, 244 Ala. 455, 14 So. 2d. 156. It follows that if Section 12, supra, has no application in "dry" counties, then the advertising of alcoholic beverages may be done without limitation or restriction in such counties. I know of no other provision of presently effective law, other than Section 12, supra, either prohibiting or limiting such advertising.

The provision of the Alabama Beverage Control Act (Sections 1-78, Title 29, Code of 1940) that it shall not go into effect in "dry" counties and that all laws prohibiting the manufacture and sale of alcoholic liquors shall remain in force therein means that the Act shall not be effective in such counties to the extent that it conflicts with existing laws suppressing the evils of intemperance, except as otherwise apparent therein, and does not apply to prevent application in "dry" counties of such features of the

Act as are evidently intended to apply therein. **Holt v. State,** 238 Ala. 2, 193 So. 89; see also **Newton v. State,** 241 Ala. 1, 200 So. 428; **Lovett v. State,** 244 Ala. 601, 14 So. 2d. 838. The **Holt** case held that Section 47 of the Alabama Beverage Control Act (now Section 64 of Title 29, Code of 1940), prohibiting the counterfeiting, etc., of stamps, lids, or crowns was effective in "dry" counties and was applicable to an offense committed in such a county. In my opinion Section 12, supra, is likewise applicable to and effective in "dry" as well as "wet" counties. It does not conflict with existing laws and was evidently intended to apply therein to replace the old (now non-existent) law against the advertising of alcoholic beverages.

In view of the foregoing it follows that the Alabama Beverage Control Board is without authority to promulgate rules and regulations prohibiting the advertising of alcoholic beverages in "dry" counties, which advertising is specifically authorized by positive law applicable to and effective in such counties.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

December 6, 1946.

Hon. E. W. Gunn, Administrator,
Alabama Alcoholic Beverage Control Board,
Montgomery 2, Alabama.

Alcoholic Beverage Control Board—Code 1940, Tit. 29, § 2 (a).

The Alcoholic Beverage Control Board not authorized to expend moneys to print and distribute pamphlets urging the temperate use of alcoholic beverages or pointing out that some persons cannot safely consume such beverages.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion, bearing date of December 2, 1946, is as follows:

"I quote you herewith Subsection (a) of Section 2 of Title 29, Code of Alabama 1940:

" 'This chapter shall be deemed an exercise of the police power of the State of Alabama for the protection of the public welfare, health, peace and morals of the people of the state, and to prohibit

forever the open saloon; and all of the provisions of this chapter shall be liberally construed for the accomplishment of this purpose.'

"Would the Alabama Alcoholic Beverage Control Board have the authority to expend monies for the printing of a series of pamphlets urging the temperate use of alcoholic beverages in pointing out to the general public that some persons cannot safely consume any alcoholic beverages at all? Such pamphlets would be distributed through the State Liquor Stores by placing them in paper sacks when the purchase was made and also distributed through other channels."

In my opinion, Code 1940, Tit. 29, § 2 (a), cannot be construed as authority to the Board to expend its funds for the purposes stated in the concluding paragraph of your request.

Sections 10 and 11 of Title 29 expressly provide for the disposition and use of profits derived from operation of State liquor stores. The provisions of said sections cannot be added to or subtracted from by use of the profits for purposes other than those stated, however desirable or salutary such other purposes might be in the opinion of the Board.

Section 5 of Title 29 defines and sets forth the "functions, duties and powers" of the Board, but does not purport to confer any power or impose any duty such as that contemplated in your request.

The Board is a statutory agency or creature of the State and can exercise only such powers and authority as are expressly vested in it by statute, or as are necessary for the exercise of such express powers and authority.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

December 6, 1946.

Hon. Roy Johnson,
Tax Assessor,
Jefferson County,
Montgomery 3, Alabama.

Homestead Exemptions—Code 1940, Tit. 7, § § 633, 657—Tit. 51, § 15.

1. Lease of homestead by owner does not of itself operate as an abandonment and loss of the homestead exemption from taxation under Code 1940, Tit. 51, § 15, provided owner files the declaration authorized by Code 1940, Title 7, § 633, although

such owner may continue to live in the county where his homestead is situated.

2. In the absence of other facts to indicate an abandonment, the filing of the declaration creates a prima facie presumption that the owner intends to return to and occupy the homestead.

3. Whether or not there has been an abandonment and loss of the homestead exemption from taxation is a question of fact under all the circumstances attending each particular case.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion, bearing date of December 3, 1946, is as follows:

"A home-owner living in the City of Bessemer rents her home and moves to a hotel in Bessemer. She files a declaration of temporary absence with the Probate Judge and claims her homestead exemption.

"Another instance: a home-owner rents his home, and moves from Bessemer to Birmingham, filing a declaration of temporary absence with the Probate Judge at Bessemer, and then claims homestead exemption.

"You will note that neither of these parties has moved out of the county, and one of them resides at a hotel within the city in which she claims homestead exemption.

"I would like to have an official ruling on whether homestead exemption should be allowed in the above two cases."

From the foregoing I assume that the "declaration of temporary absence" to which you refer was in each case filed pursuant to Code 1940, Tit. 7, § 633, and in conformity with the requirements of that statute.

The effect of such declaration is that a leasing of the homestead does not operate as an abandonment and that the right of exemption "shall remain the same as if actual occupancy thereof had continued." **Code 1940, Tit. 7, § 657; Fuller v. American Supply Co., 185 Ala. 512; Biennial Report, Attorney General, 1936-38, p. 385.**

The fact that after making the lease the taxpayer continues to reside in the county wherein the homestead is situated does not of itself, in my

opinion, create any presumption that the taxpayer intends to abandon the homestead or will not in due course, for reasons satisfactory to himself, resume actual occupancy thereof.

Upon the facts stated, without more, I am of opinion the exemption should be allowed in each instance.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

December 10, 1946.

Hon. Ben C. Morgan, Director,
Department of Conservation,
Montgomery 4, Alabama.

Constitution of 1901, Sections 43, 44—Title 8, Section 81 (1) (General Acts of 1945, p. 408)—Conservation—Department of Conservation—Rules and Regulations—Fish—Hunting and Fishing.

Rule or regulation of Conservation Department prohibiting commercial fishing near dam not unconstitutional.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of November 5, 1946, is as follows:

"Pursuant to Title 8, Section 81 (1), the Director of Conservation promulgated a regulation which appears in the Regulation Booklet as Regulation No. 13 on page 22. This regulation controls commercial fishing in the Guntersville, Pickwick, Wheeler, and Wilson Reservoirs. The ninth paragraph of said regulation prohibits the use of a trotline or snagline closer than one quarter of a mile of any dam in any of the reservoirs named in the regulation.

"I would like to have your official opinion as to whether or not this paragraph is within my authority to promulgate, and if same is legal and constitutional."

It is our opinion that the paragraph of the rule referred to in your inquiry is not illegal, unreasonable or in violation of the Constitution.

Title 8, Section 81 (1), Code of Alabama 1940, (General Acts 1945, p. 408) provides, in part, as follows:

> "Any person, firm, copartnership, association, or corporation engaged in the taking, killing, or capturing of commercial or non-game fish from the public fresh waters of the State of Alabama in reservoirs on streams having an effective drainage area of not less than 21,500 square miles above such reservoir or reservoirs may use in commercial fishing operations hoop and fyke nets, seines, gill nets, trammel nets, pound or trap nets, set lines, trotlines, and snaglines, and lawful fish traps. However, all such nets, setlines, trotlines, snaglines, and fish traps shall conform to the rules and regulations of the department of conservation covering same, who shall designate when, where, and how same shall be used. . . ."

That paragraph of the rule and regulations referred to in your inquiry provides in part as follows:

> "13. Commercial Fishing in Guntersville, Pickwick, Wheeler and Wilson Reservoirs Regulated. Commercial fishing gear as hereinafter prescribed may be used for the taking of commercial or non-game fish only, in the Guntersville, Pickwick, Wheeler and Wilson Reservoirs, except in those portions thereof as are specifically described in the following sections of this regulation, in which places only trot lines and snag lines may be used. Said commercial fishing gear may be used only at such time and in such manner as shall be hereinafter stated. The fishing gear referred to herein include only the following: hoop nets, fyke nets, gill nets, fish traps, trammel nets, seines, trot lines and snag lines.
>
> * * * * *
>
> "No person shall use a hoop net, fyke net, gill net, fish trap, trammel net, seine, trot line or snag line closer than one-quarter mile of any dam in any of the reservoirs named in this regulation."

For the purpose of this inquiry, we assume that the reservoirs of Guntersville, Pickwick, Wheeler and Wilson have an effective drainage area of not less than 21,500 square miles.

The only serious constitutional question that could be raised in connection with this rule is that the rule as applied in some particular case may amount to the exercise of legislative power by an executive or administrative department, viz., the Department of Conservation. The rule of law is well known that the legislature cannot delegate legislative power, the power to make the law, to the Department of Conservation or any other executive or administrative department. Constitution of 1901, Sections 43, 44.

We do not believe that the Department of Conservation has exceeded its authority in promulgating that part of Rule 13 above quoted. The legislature has made the law by enacting those provisions found in Title 8, Section 81 (1), Code of Alabama 1940, providing that commercial fishermen may take commercial or non-game fish in certain large reservoirs of the State of Alabama by using certain equipment, including trotlines and snaglines. The legislative act further provides, however, that this fishing equipment, including trotlines and snaglines, shall be used when, where and how the Department of Conservation designates. The legislature has, therefore, made the law and has merely authorized the Department of Conservation to fill in the details in the administration of that law. If the rule or regulation is a reasonable one, it cannot be held void.

In the case of **State v. Vaughan,** 241 Ala. 628, 4 So. 2d. 5, cert. denied 4 So. 2d. 9, it was held that a rule and regulation of the Department of Conservation was invalid, for the reason that such rule attempted to make illegal the possession or sale of certain fish, which possession or sale was not made illegal by an act of the legislature. The question presented by your inquiry is not a similar one.

It has been held that the regulation of fish traps is a reasonable exercise of the police power of the State. **Stacks v. State,** 20 Ala. App. 462, 103 So. 70. It has also been held that the legislature may confer upon a board or executive body the power to make rules and regulations, the violation of which will support prosecution. **Reims v. State,** 17 Ala. App. 128, 82 So. 576. And when a board or administrative agency is empowered to make rules and regulations within the law enacted by the law-making body, the delegation of power is not unconstitutional. **Ferguson v. Starkey,** 192 Ala. 471, 68 So. 348.

It was said in the case of **State v. Vaughan, supra,** there is no absolute and universal formula for determining power which must be exercised by the legislative body itself, instead of delegating it to an administrative agency, but each case must be controlled by the application of the general principles to a given situation. It is our opinion, therefore, that the legislature has set the policy, i. e., the policy of the protection and conservation of fish, and has stated that certain devices, including snaglines and trotlines, may be used in certain waters by commercial fishermen, but the legislature has further delegated to the Department of Conservation the "power to fill up the details" as to when, where and how these fishing devices may be used. See **U. S. v. Grimaud,** 220 U. S. 506, 31 S. Ct., 480, 55 Law Ed. 563.

You are advised, therefore, that the rule is valid.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

December 12, 1946.

Hon. A. R. Meadows, Superintendent,
Department of Education,
Montgomery 4, Alabama.

Constitution 1901, § 269, as amended (Gen. Acts 1945, p. 316) —City of Cullman.

Property and subjects of taxation in the City of Cullman are subject to the special school tax authorized to be voted and levied by Section 269 of the Constitution in the same manner and to the same extent as in other cities.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion, bearing date of December 6, 1946, is as follows:

"Subsection C of Section 1, and Subsection C of Section 3 of the Constitutional Amendment ratified by the people in the November 5, 1946, election, amending Section 269 of the Constitution, provides that 'notwithstanding the provision to the contrary in Section 269 of this Constitution the special tax for educational purposes provided for by that section may be levied upon taxable property situated in the City of Cullman.' The county one-mill tax as provided for in Section 269 of the Constitution expires in Cullman County September 30, 1947. County school officials desire to hold an election to re-vote or extend the county one-mill tax, which at present is not levied over the City of Cullman.

"Your opinion is sought on the following questions:

"1. In holding an election to extend the term of the one-mill county tax, provided for in Section 269 of the Constitution, and as amended in the November 5, 1946, election, may the county hold a county-wide election to levy the one-mill tax over the entire county, including the City of Cullman?

"2. If the answer to question 1 is no, how may the one-mill tax be levied over the City of Cullman?"

The effect of the constitutional amendment to which you refer (Gen. Acts 1945, p. 316) is, among other things, to bring the City of Cullman within the operation of Section 269 of the Constitution of 1901, to the same extent and with the same effect as if said City had never been excluded from its operation.

Your question numbered 1 is therefore answered in the affirmative. The provisions of subsection C of the amendment are separate and apart and in no wise dependent upon or connected with subsections A and B. The amendment operates, so far as the City of Cullman is concerned, to strike out said City from the concluding proviso of Section 269 of the Constitution.

The result is that henceforth the county-wide special tax authorized by said Section 269 may be voted and levied on property and other subjects of taxation in said City in the same manner and to the same extent as in other cities.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

December 13, 1946.

Hon. Chauncey Sparks,
Governor of Alabama,
Montgomery, Alabama.

Appointment by Governor—Certification of Vacancy—Duration of Appointment Made—Title 13, Section 252, Code of Alabama 1940.

1. Certification of fact of existence of vacancy should be certified to appointing authority by Presiding Judge of Judicial Circuit.

2. When incumbent, duly elected as his own successor at General election of November 5, 1946, dies before qualifying for new term of office, appointment may be made by Governor to fill vacancy in term of office beginning with date of General election of November 5, 1946.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion, bearing date of December 10, 1946, is as follows:

"I am advised that the office of Deputy Circuit Solicitor, Bessemer Division, Jefferson County, an office created by local act, is vacant. I am further advised that Honorable A. H. Green, deceased, who was the Deputy Solicitor, had been re-elected for the four-year term at the General Election November 5, 1946.

"Please give me your answer to the following questions:

"1. Under the local law creating the office, who certifies the vacancy to me?

"2. If an appointment is made immediately, how long would the appointee hold office?"

"3. Can the appointment for the long term be made now? If not, when can it be made?"

I shall herewith give answer to your questions in the numerical sequence by which same are set out in your request for an opinion.

In reply to your first question it is my opinion that the fact that a vacancy exists in the office mentioned in your letter should be certified to you, as appointing authority, by the Presiding Judge of the Judicial Circuit. I find no specific provision within the statutes creating this office setting out the manner by which said vacancy shall be filled, nor the manner by which the fact of such vacancy shall be certified to the appointing authority. However, construing the provisions of Chapter 5, Title 41, Code of Alabama 1940, and likewise the provisions of Sections 226 and 228 of Title 13, Code of Alabama 1940, it is my opinion that the Presiding Judge of the Judicial Circuit would be the proper person to certify the fact of such vacancy to you.

The reply to your second inquiry requires certain amplification.

Under the statutes creating the office held by the deceased at the time of his death it is provided that:

"At the General election held on the first Tuesday after the first Monday in November, 1942, and each four years thereafter, there shall be elected by the qualified voters of the Bessemer Division of Jefferson County, a deputy circuit solicitor of the Tenth Judicial Circuit, who shall hold office for the term of four years, and until his successor is elected and qualified. . . ."

Under the provisions of this statute the term of office of such officer runs from the date of the General election at which said officer is duly elected to the date of the General election four years hence, and until his successor is elected and qualified. The latter provision has been defined by our courts to be nothing more than a "hold-over clause" under which an incumbent holds office until his successor has been duly elected and qualified. **State ex rel. Foster v. Rice**, 230 Ala. 608; 162 So. 292.

As pointed out in that case the fact that said incumbent holds office under the "hold-over clause" after the expiration of his elected term

of office acts as no extension of the elected term of the incumbent nor as any encroachment upon the term of his duly elected successor.

The deceased was re-elected as his own successor at the General election held on November 5, 1946, but had failed to qualify or take the oath of office as his successor at the time of his death. It is, therefore, my opinion that at the time of his death the deceased was holding office by virtue of the "hold-over clause" which did not act as an extension of his previous term of office which expired at the General election of November 5, 1946.

It is my opinion that a vacancy in office can occur in either of the following manners:

(1) By the death of the incumbent, or

(2) by the failure of his duly elected successor to qualify and enter upon the duties of office.

It is, therefore, my opinion that if it is certified to you by the Presiding Judge of the Tenth Judicial Circuit that the incumbent in said office has been taken by death, and likewise that his duly elected successor has not qualified for said office and that there is no possibility of his so qualifying, which would be the case here, that you may thereupon make an appointment to fill the vacancy in the term of office beginning November 5, 1946.

If, however, only the death of the present incumbent is certified to you, with no mention being made of the failure or impossibility of said successor qualifying for such office, it is my opinion that the appointment made at this time would only be valid until the receipt of the certification of the failure, or impossibility, of said successor to qualify for the office to which elected. Upon receipt of the second certification appointment could then be made by you to fill the vacancy in the term of office beginning November 5, 1946.

It is believed that in giving answer to your second inquiry we have also answered the question presented by your third inquiry, hence no further comment thereon is needed.

Respectfully submitted,

WILLIAM N. McQUEEN,

Attorney General.

December 14, 1946.

Hon. Charles W. Terry,
Personnel Director,
Montgomery, Alabama.

STATE OFFICERS—SALARIES—TERMS OF OFFICE—

Constitution 1901, Section 116—Title 41, Section 15 and Title 41, Section 149, Code of Alabama 1940.

The terms of outgoing State officers expire at midnight, January 20th, and the terms of incoming State officers begin January 21st, 1947.

The succeeding officer is entitled to the salary for the day upon which he is inducted into office to the exclusion of the outgoing officer.

Opinion by Assistant Attorney General Harris.

Dear Sir:

Your request for an official opinion, bearing date of November 26, 1946, is as follows:

"On January 20, 1947, many succeeding officers, both State and County, will be inducted into office.

"Title 41, Section 149, Code of Alabama 1940, provides—'The succeeding officer is entitled to the salary for the day upon which he is inducted into office, to the exclusion of the retiring officer.'

"Please furnish me with your official opinion on the following questions:

"1. Will the succeeding officer be paid the salary of the retiring officer for the day of January 20, 1947?

"2. Is the retiring officer responsible for his office on January 20, 1947, and, if so, will he receive any pay for his responsibility?"

Both of the questions propounded in your inquiry have been answered by the Supreme Court of Alabama in the case of **Oberhaus v. State ex rel. McNamara,** 173 Ala. 483, 55 So. 898.

Without going into detail, suffice it to say that the Court held that the Governor and other State officers hold their offices "for a term of four years from the time of their installation in office, * * * such installation to take place on the first Monday after the second Tuesday in January next after their election," and that the outgoing Governor's term

does not expire until midnight on the last day of his term, and that the incoming Governor's term does not begin until the next day. Therefore, Governor Sparks' term of office will not expire until midnight Monday, January 20th, and Governor-Elect Folsom's term will not begin until Tuesday, January 21st, even though he takes the oath of office on January 20th as planned.

Under the provisions of Section 149 of Title 41, Code of Alabama 1940, Governor Sparks will not be paid for January 20th, but the salary of the Governor for that day must be paid to Governor-Elect Folsom.

This applies to all State officers who are on a salary.

Yours very truly,

WILLIAM N. McQUEEN,
Attorney General.

December 19, 1946.

Hon. H. G. Dowling, President,
Alabama Institute for Deaf and Blind,
Talladega County,
Talladega, Alabama.

General Acts of 1945, pp. 163, 172—Appropriations—Alabama Institute for Deaf and Blind—Words and Phrases—"Pupils enrolled."

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of December 13, 1946, is as follows:

"The General Appropriations Act of the 1945 Legislature states that a per capita amount must be paid to the Alabama Institute for Deaf and Blind for 'each pupil enrolled on January 1st.'

"I am writing to ask your opinion as to the legal meaning of the term 'enrolled.'

"The term 'enrolled' is capable of several interpretations. It can mean every child whose name is entered on our school registers from the beginning of school in September up to January 1st, although some of these may have been found unsuitable for this institution and may have been sent away. The term can mean active enrollment; that is, those either present on January 1st or absent momentarily and expected to return. It can mean those who by January 1st have filed applications and who are expected in school within a few days. It can include those who have enrolled, whose partents have re-

moved them without legal authority from school, and whom the school through its field agent and attendance officers is attempting to bring back into active status.

"It may be that the only answer to the question is that the superintendent must use common sense. However, I should like for my files a comment from the Attorney General's office which would guide a little more definitely since a substantial amount of money is involved in each decision."

The general appropriation Act of 1945 referred to in your inquiry provides in part as follows:

"Section 1. That there is hereby appropriated for the ordinary expenses of the Executive, Legislative, and Judicial Departments of the State, for the interest on the public debt, and for the public schools for each of the two fiscal years ending respectively September 30, 1946, and September 30, 1947, to be paid out of any moneys in the State Treasury not otherwise appropriated, the several sums of money hereinafter specified or so much thereof as may be necessary:

* * * * *

"VII. EDUCATION:

"(1) ALABAMA INSTITUTE FOR DEAF AND BLIND: For the maintenance, support, insurance, and upkeep of the Alabama Institute for Deaf and Blind, an educational institution which is a division of the public schools of Alabama, an amount to be fixed by the Governor at not less than $305.00 per pupil per annum, and not more than $450.00 per pupil per annum, such appropriation to be based on the number of pupils enrolled on the first day of January of each year, and to be drawn quarterly in advance by the treasurer of the board of the Alabama Institute for Deaf and Blind and to be disbursed as directed by said board, estimated.....$270,000.00."

In making the above appropriation for the maintenance, support, insurance, and upkeep of the Institute, the legislature has given the Governor the authority to fix the amount per pupil to be expended. This amount may vary from $305.00 per pupil per year to $450.00 per pupil per year.

It is further provided for in the appropriation that "such appropriation (shall be) based on the number of pupils enrolled on the first day of January of each year. . . ." The question is, therefore, how to arrive at the "number of pupils enrolled" on that date.

The legislature has expressly provided that the number of enrolled pupils on a certain day, January 1, shall be used to determine the annual

appropriation. We shall attempt, therefore, to enumerate the classes of persons who should be considered as pupils enrolled on January 1. Since the purpose of this appropriation is to maintain and support the Alabama Institute for Deaf and Blind and its pupils, the number of pupils included on the list and upon which the appropriation is based must be such a number as will reflect the number of students which the Institute is obligated to maintain and support during the year following January 1. The number should bear a reasonable relation to the total number of persons that the Institute is required to maintain and support for the following year. The list should, therefore, include at least the following persons:

1. Those persons who on January 1 have been and are regularly enrolled pupils who are present at the Institute and receiving instruction or treatment.

2. Those persons who on January 1 have filed applications and who have completed the registration formalities required by the Institute and who are expected in school within a reasonable time after January 1.

4. Those persons who have been enrolled on or before January 1 but who have been removed from the school without legal authority, and whom the school, through its field agents and attendance officers, is attempting to bring back into active status. In connection with this category it should be stated that before including this class, the superintendent should be reasonably satisfied that such person will in all probability be brought back.

I do not believe that the list can include those who on January 1 have been found unsuitable for the Institute and have been sent away. The list of enrolled pupils is to be used for determining future appropriations and not past expenses. If, however, persons of this group have not been sent away on January 1 and it is not known whether or not they will be sent away, it is my judgment that they should be included, the Institute being responsible for their maintenance and support until they are sent away.

There may be other classes not considered in this opinion and not called to our attention which may also be included. We will be glad to decide these other questions when they are presented.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

December 19, 1946.

Mr. W. P. Davidson,
Business Assistant,
Superintendent's Office,
Mobile Public Schools,
Mobile County,
Mobile, Alabama.

Schools—Labor Unions.

1. Neither County Boards of Education nor City Boards of Education have authority to enter into contract with a labor union, recognizing such union as the bargaining agent of their employees.

2. County Boards of Education and City Boards of Education may require that its employees not belong to a labor union, either as a condition precedent to employment or as a condition subsequent to the retention of employment.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion, bearing date of December 9, 1946, is as follows:

"Recently we read an article in the Mobile paper relative to organizing all labor and other employees at the University of Alabama and your opinion stating that this was not possible. We are threatened with the same unionization of our repair crews and janitors in Mobile and we shall appreciate it if you will advise if your formal opinion would cover the situation in Mobile. A formal expression from you relative to this matter will be appreciated."

In answer to your inquiry it is my opinion that the principles enumerated in former opinions of this office, relative to employees of agencies of the State of Alabama belonging to labor unions, are applicable to the Mobile Public Schools.

In an opinion of this office, rendered to the President of the Etowah County Board of Revenue under date of April 10, 1941 (Quarterly Report of Attorney General, Vol. 23, p. 55), it was held that a county may not legally enter into a contract or agreement with a labor organization or union, recognizing such union as a bargaining agent for county employee members of said union, agreeing as to hours and employment, wages, vacations with pay, and holidays with pay for county employee members of said union.

The holding of said opinion was based on two theories. Firstly, that the county, a mere political subdivision of the State—an agency of limited jurisdiction having only those powers expressly authorized by statute, or necessarily implied therefrom—could not legally enter into such a contract, the ultimate effect of which might be to remove the control of the government from the people as a whole, acting through their duly constituted officials. And, secondly, that such a contract would be contrary to the public policy of this State, which policy was evidenced by House Joint Resolution No. 142, approved July 10, 1940 (General Acts 1939, p. 1004).

A County Board of Education is a "quasi corporation," an independent governmental agency of the State, created by law, and endowed with certain rights and powers defined by statute, and, being a creature of statute, can exercise only those powers which are expressly conferred upon it, or necessary incident thereto. **County Board of Education v. Slaughter**, 230 Ala. 229, 160 So. 758; **Greeson Manufacturing Company v. County Board of Education**, 217 Ala. 565, 117 So. 163; **Kimmons v. Jefferson County Board of Education**, 204 Ala. 384, 85 So. 774; **Quarterly Report of Attorney General**, Vol. 8, p. 263. Likewise a City Board of Education is an agency of the State. **Quarterly Report of Attorney General**, Vol. 8, p. 263, supra.

It follows that both county boards of education and city boards of education are in the same category as counties, and, therefore, both the holding and reasons therefor, as applied to counties in the above noted opinion, are likewise applicable to such boards of education.

In view of the above, I am of the opinion (1) that neither county boards of education nor city boards of education have authority to enter into a contract with a labor union, recognizing such union as a bargaining agent for their employees, and, (2) that such a contract, being unauthorized, said boards may legally require its employees not to belong to a labor union, either as a condition precedent to employment or as a condition subsequent to the retention of employment. **Opinion of Attorney General to President, University of Alabama**, dated December 3, 1946; **Opinion of Attorney General to President of City Commission of Gadsden**, dated September 19, 1946.

Although the public schools of Mobile County are under the control of the Board of School Commissioners rather than a county or city board of education, nevertheless the above is applicable thereto. The Board of School Commissioners of Mobile County, in my opinion, is an agency of the State of Alabama the same as county or city boards of education.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

December 20, 1946.

Hon. S. P. Poyner,
Judge of Probate,
Houston County,
Dothan, Alabama.

Code of 1940, Title 12, Section 12 (17)—County Extension Service—Moving Pictures—Health—Counties.

County governing body is authorized to purchase motion picture projector in extension service and for health purposes.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of November 23, 1946, is as follows:

"Will you kindly advise me if the Board of Revenue of Houston County, Alabama, has the authority under the law to purchase a motion picture machine to be used by the County Agent and the Extension Service for educational purposes among the farmers in showing better methods of farming and to be used for showing pictures calculating for the improvement of the Health in the prevention of cancer and otherwise."

Part of your question is answered in the affirmative by our opinion of June 19, 1945, 39 **Quarterly Report of the Attorney General**, p. 52, where it was held that the county governing body may appropriate money for the purposes of purchasing a motion picture machine to be used solely by the county extension service in projecting visual education on farm subjects. You are advised, therefore, that a motion picture projector could be purchased under the county's authority to make appropriations to aid in the farm extension service. Title 12, Section 12, Subsection 17, Code of Alabama 1940. See also Subsection 22.

You are further advised that the county is also authorized to appropriate money to promote and enforce the health and quarantine laws of the state for the benefit of the county and its inhabitants when requested to do so by the State Board of Health. Title 12, Section 12, Subsection 19. The motion picture projector could, therefore, be purchased under either of these two provisions of law. The second provision (Subsection 19) would, of course, require the approval of the State Board of Health.

We enclose a copy of the opinion referred to.

Yours very truly,

WILLIAM N. McQUEEN,
Attorney General.

INDEX

Quarterly Report, Attorney General

Volume 45

October 1, 1946, Through December 31, 1946

Page

—A—

ACTS (GENERAL AND LOCAL):

GENERAL ACTS 1939:
Page 1004 ..... 19, 43

GENERAL ACTS 1945:

Page 163 40
Page 172 40
Page 316 35
Page 408 32
Page 447 21
Page 473 21

LOCAL ACTS 1945:
Page 69 10

AGRICULTURE AND INDUSTRIES:
Agricultural Center Board—Powers and duties of in reference to regional exhibition facilities 21

ALABAMA ALCOHOLIC BEVERAGE CONTROL BOARD:
Expenditures—Not authorized to print and distribute pamphlets urging temperate use of alcohol 29
Rules and regulations—Authority to promulgate prohibiting advertising of alcoholic beverages in "dry counties" 27

ALABAMA INSTITUTE FOR DEAF AND BLIND:
"Pupils enrolled"—Term construed 40

APPROPRIATIONS:
Alabama Institute for Deaf and Blind—"Pupils enrolled"—Term construed 40
City of Mobile—Authority to grant financial aid for State Docks Expansion Program 5

INDEX

(Continued)

Page

—C—

CITY BOARDS OF EDUCATION:
Labor Unions—Employees—May be required subsequent and precedent to employment not to belong to 43

CODE OF ALABAMA 1940:

TITLE 7:
Section 633 30
Section 657 30

TITLE 8:
Section 81(1), as amended 32

TITLE 12:
Section 12(17) 45
Section 12(19) 45
Section 78 27

TITLE 13:
Sections 226, 228 36
Section 252 36

TITLE 15:
Section 392 14

TITLE 29:
Section 2(a) 29
Section 5 29
Section 6 27
Sections 10, 11 29
Section 12 27

TITLE 36:
Section 24 14
Sections 53, 53(1) 14

TITLE 37:
Section 470 5
Section 513 5

TITLE 41:
Section 15 39
Section 149 39

INDEX

(Continued)

Page

TITLE 51:
Section 15 30
Section 314 16

CONSERVATION, DEPARTMENT OF:
Rule or regulation prohibiting commercial fishing near dam—Constitutional 32

CONSTITUTION OF 1901:
Section 39 13
Sections 43, 44 32
Section 52 13
Section 104(21) 10
Section 105 10
Section 116 39
Section 269, as amended 35

CONSTITUTIONALITY:
Local Acts 1945, p. 69—Jackson County—Justices of the Peace—Jurisdiction 10

COUNTIES:
Motion picture machine—may purchase for health purposes 45
Motion picture machine—May purchase to promote county extension service 45

COUNTY BOARDS OF EDUCATION:
Labor Union—Employees—May be required subsequent and precedent to employment not to belong to 43
Labor unions—Cannot contract with 43

COURTS OF COUNTY COMMISSIONERS:
Motion picture machine—May purchase for health purpose 45
Motion picture machine—May purchase to promote county extension service 45

—E—

EXEMPTIONS:
Homestead—Lease of—Declaration of temporary absence—Effect of 30
Homestead—Abandonment—Question of fact in particular case 30
Municipalities—Taxation—Land on which plant located not exempt from 16
Municipalities—Taxation—Exemption of plants from 16

INDEX

(Continued)

Page

Taxation—City of Cullman—Property in—Not exempt from special tax authorized under Section 269, Constitution 1901, as amended 35

—F—

FINES AND FORFEITURES:
Highway Patrol Fund—Fine for approaching school bus without stopping paid into 14

—G—

GOVERNOR:
Deputy circuit solicitor—Bessemer Division—Death after general election—Vacancy filled by appointment of 36
Deputy circuit solicitor—Bessemer Division—Certification of vacancy—Made by presiding judge of judicial circuit 36

—H—

HOMESTEAD EXEMPTIONS:
Abandonment of homestead—Question of fact in particular case 30
Lease of homestead—Declaration of temporary absence—Effect of 30

—J—

JACKSON COUNTY:
Justices of the peace—Precinct 21—Jurisdiction—Local Acts 1945, p. 69, constitutional 10

JEFFERSON COUNTY:
Deputy circuit solicitor—Bessemer Division—Certification of vacancy—Made by presiding judge of judicial circuit 36
Deputy circuit solicitor—Bessemer Division—Death after general election—Vacancy filled by appointment of Governor 36

JUSTICES OF THE PEACE:
Jackson County—Precinct 21—Jurisdiction—Local Act 1945, p. 69, constitutional 10

INDEX

(Continued)

Page

—L—

LABOR:
University of Alabama—Labor unions—No authority to enter into contract with 19
University of Alabama—Union—Employees may be required subsequent or precedent to employment not to belong to 19
Unions—County and city boards of education cannot contract with 43

—M—

MERIT SYSTEM:
State officers—Term of 39

MUNICIPALITIES:
City of Mobile—Authority to grant financial aid for State Docks Expansion Program 5
Electric power plants—Franchise granted to protected by State and Federal Constitutions 16
Electric power plants—May grant franchise to and include exemption from taxes 16
Taxation—City of Cullman—Property in—Subject to special school tax authorized under Section 269, Constitution 1901, as amended 35
Taxation—Exemption of plants from 16
Taxation—Exemptions—Land on which plant located not exempt from 16

—O—

OFFICERS & OFFICES:
Deputy circuit solicitor—Bessemer Division—Death after general election—Vacancy filled by appointment of Governor 36
Deputy circuit solicitor—Bessemer Division—Certification of vacancy—Made by presiding judge of judicial circuit 36
State—Term of 39

—P—

PUBLIC SAFETY DEPARTMENT:
Fine for approaching school bus without stopping—Paid into Highway Patrol Fund 14

INDEX

(Continued)

Page

—S—

SCHOOLS:
Alabama Institute for Deaf and Blind—"Pupils enrolled"—Term construed 40
Labor unions—County and city boards of education—Cannot contract with 43
Labor unions—Employees—County and city boards of education—May be required subsequent or precedent to employment not to belong to 43
School tax authorized under Section 269, Constitution 1901, as amended—City of Cullman—Property in—Subject to 35

STATE:
Officers—Term of 39

STATE DOCKS COMMISSION:
City of Mobile—Authority to grant financial aid for State Docks Expansion Program 5

STATUTES:
Enactment—Number of votes required 13

—T—

TAXATION:
City of Cullman—Property in—Subject to special school tax authorized under Section 269, Constitution of 1901, as amended 35
Homestead exemptions—Abandonment of homestead—Question of fact in particular case 30
Homestead exemptions—Lease of homestead—Declaration of temporary absence—Effect of 30
Municipalities—Exemption of plants from 16
Municipalities—Exemptions—Land on which plant located not exempt from 16

—U—

UNIVERSITY OF ALABAMA:
Labor unions—Employees may be required subsequent or precedent to employment not to belong to 19
Labor unions—No authority to enter into contract with 19

—W—

WORDS & PHRASES:
"Pupils enrolled" 40